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OFFICE OF PETITIONS

In re Application of :
Sampsell et al. :
Application No. 09/289,327 : ON PETITION
Filed: 8 April, 1999 :
Atty Docket No. KLR: 7146.021 :

This is a decision on the petition under 37 CFR 1.137(b),¹ filed on 26 March, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 1 December, 2002, for failure to file a proper reply to the non-final Office action mailed on 30 August, 2002, which set a three (3) month shortened

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

statutory period for reply. The filing of the present petition precedes the mailing of Notice of Abandonment.

Petitioner has now filed an amendment as well as payment for an additional extension of time.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.² The three-month extension request filed on 12 February, 2004, was submitted more than six (6) months after the mailing date of the Office action mailed on 30 August, 2002, and therefore is unnecessary. The extension of time fee paid on 26 March, 2004, will be credited to counsel's deposit account, No. 03-1550 as authorized.

The application is being forwarded to Technology Center 2800 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

²See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).